

**IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE
*REAL ESTATE AND BUSINESS BROKERS ACT, 2002, S.O. 2002, c. 30, Sch. C***

BETWEEN:

REAL ESTATE COUNCIL OF ONTARIO

- AND -

NASSIR ALNASHMI

DISCIPLINE DECISION AND REASONS FOR DECISION

Subject to Rule 4.02 of the Discipline and Appeals Committee Rules of Practice (*REBBA 2002*), I, the Chair of the Discipline Committee (*REBBA 2002*) have reviewed and considered the Agreed Statement of Facts and Penalty together with the Waiver of Hearing submitted by the Parties to this proceeding and provide the following Order:

FINDINGS: In violation of Sections 3, 4, 18, 28, 37, 38, and 39 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$20,000.00 payable to RECO on or before May 1, 2023.

Successful completion of the "REIC 2600: Ethics and Business Practice" course provided by the Real Estate Institute of Canada on or before May 1, 2023; and, to provide proof of completion to RECO within 60 days of completion of the course.

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

This matter proceeded on the basis of an Agreed Statement of Facts and Penalty and Waiver of Hearing, pursuant to Rule 4.02 of the Rules of Practice (*REBBA 2002*).

The Agreed Statement of Facts and Penalty read:

AGREED STATEMENT OF FACTS AND PENALTY

It is agreed as follows:

1. Nassir Alnashmi ("Alnashmi") is registered as a broker under the Real Estate and Business Brokers Act, 2002 ("Act").
2. At all relevant times, Alnashmi was employed as a salesperson at the Brokerage A. Alnashmi is currently employed at Brokerage B.
3. Seller A and his son Seller B (the "Sellers") were the owners of the property known municipally as 1-A Street, City A (the "Property").
4. Individual A operates a handyman business in and around City A known as Company A.
5. In December 2019, the Sellers decided to prepare the Property for sale and hired Individual A to conduct the necessary repairs and assorted tasks.
6. Individual A introduced Alnashmi to the Sellers as someone who would be interested in purchasing the Property.
7. Alnashmi viewed the Property and through Individual A, made a verbal offer to purchase the Property for \$100,000.00. The Sellers negotiated this offer, and a price was agreed upon of \$102,500.00.
8. On or about December 6, 2020, Individual A delivered Alnashmi's offer to the Sellers by way of an unsigned Agreement of Purchase and Sale.
9. Both Seller A and Seller B initialed, signed, and then returned the Agreement of Purchase and Sale to Alnashmi by way of Individual A (the "APS").
10. The APS, which had been prepared by Alnashmi, indicated as follows:
 - a. The deposit cheque of \$2,000.00 was to be payable to Brokerage A;
 - b. The listing brokerage was Brokerage C with Registrant A acting as salesperson;
 - c. The buyer brokerage was Brokerage D with Registrant B acting as salesperson; and
 - d. The completion date was January 10, 2020.

11. At no time during the process of selling the Property did the Sellers retain a listing representative.
12. At no time during the purchase of the Property was Alnashmi represented by Brokerage D with Registrant B acting as salesperson.
13. The aforesaid listing and brokerage information was mistakenly included in the APS as it had pre-populated based on the last sale of the Property.
14. At no time during the sale of the Property did Alnashmi properly disclose to the Sellers in writing that he was a registered real estate sales representative, nor did Brokerage A act in any capacity on behalf of the Sellers.
15. On January 3, 2020, Alnashmi texted Seller A and advised that he may require an extension of the closing date as his bank needed more time to complete financing. Seller A agreed to Alnashmi's request for an extension.
16. On January 8, 2020, Alnashmi's lawyer sent Seller A's lawyer an executed Amendment to the Agreement of Purchase and Sale that changed the completion date from January 10, 2020, to January 17, 2020, (the "Amended APS").
17. The Amended APS was purportedly signed on January 6, 2020, by the Sellers; however, Seller A denies having ever seen the Amended APS prior to his lawyer bringing it to his attention and states that he did not sign or initial the amendments.
18. A few days after having agreed to Alnashmi's request for an extension of the closing date, Seller A texted Alnashmi and told him that he needed to close on January 10, 2020, due to a "huge issue" that had come up with his son.
19. Despite the Amended APS, the sale of the Property was completed as scheduled on January 10, 2020.
20. Despite Alnashmi's failure to disclose to the Sellers that he is a salesperson, Brokerage A claimed a commission on his behalf from the Sellers' lawyer in connection with his purchase of the Property.

21. There are other documents that were provided to the Seller A's lawyer at the same time as the APS that contained signatures and initials purportedly belonging to the Sellers. The Sellers allege they did not sign or initial the following documents:
 - a. Seller Customer Service Agreement, Commission Agreement for Property Not Listed;
 - b. Confirmation of Co-operation and Representation; and
 - c. Working with a Realtor.
22. A revised APS was provided to Brokerage A for its Trade File that crossed out all references to Brokerage C, Registrant A, Brokerage D, and Registrant B (the "Revised APS").
23. The Revised APS inserted Brokerage A and Alnashmi as representatives on behalf of the Listing Brokerage and the Buyer Brokerage. Alnashmi also signed and completed the section pertaining to the Commission Trust Agreement.
24. The Sellers were not provided with a copy of the Revised APS.
25. At the completion of the sale of the Property, Alnashmi was credited \$2,000 for the deposit he paid towards the purchase of the Property, which is reflected in the Statement of Adjustments. Brokerage A held the \$2,000.00 deposit on behalf of Alnashmi's commission, however, they ultimately released this to Seller A in June 2021.

SUMMARY OF AGREEMENTS

It is agreed that Alnashmi failed to comply with the Code of Ethics as follows:

- A. Alnashmi purchased the Property and failed to properly disclose to the Sellers in writing that he was a registrant, contrary to section 18 of the Code of Ethics.
- B. Alnashmi failed to provide the Sellers with a copy of the Revised APS contrary to section 28 of the Code of Ethics.

C. Alnashmi submitted trade documents to his brokerage with respect to his purchase of the Property that misrepresented his purported representation of the Sellers, contrary to sections 3, 4, 38, and 39 of the Code of Ethics.

D. Alnashmi misrepresented by way of trade documents that he entered into a Seller Customer Service Agreement with the Sellers in the sale of the Property, contrary to sections 3, 4, 37, and 38 of the Code of Ethics.

It is agreed that Alnashmi failed to comply with the following sections of the Code of Ethics:

Fairness, honesty, etc.

3. A registrant shall treat every person the registrant deals with in the course of a trade in real estate fairly, honestly, and with integrity.

Best interests

4. A registrant shall promote and protect the best interests of the registrant's client.

Disclosure of interest

18. (1) A registrant shall, at the earliest practicable opportunity and before any offer is made in respect of the acquisition or disposition of an interest in real estate, disclose in writing the following matters to every client represented by the registrant in respect of the acquisition or disposition:

1. Any property interest that the registrant has in the real estate.
2. Any property interest that a person related to the registrant has in the real estate if the registrant knows or ought to know of the interest.

(2) A brokerage shall, at the earliest practicable opportunity and before any offer is made in respect of the acquisition or disposition of an interest in real estate, disclose in writing the matters referred to in paragraphs 1 and 2 of subsection (1) to every customer with whom the brokerage has entered into an agreement in respect of the acquisition or disposition.

- (3) A broker or salesperson shall, at the earliest practicable opportunity and before any offer is made in respect of the acquisition or disposition of an interest in real estate, disclose in writing the matters referred to in paragraphs 1 and 2 of subsection (1) to every customer of the broker or salesperson with whom the brokerage that employs the broker or salesperson has entered into an agreement in respect of the acquisition or disposition.
- (4) A registrant shall disclose in writing to a client, at the earliest practicable opportunity, any direct or indirect financial benefit that the registrant or a person related to the registrant may receive from another person in connection with services provided by the registrant to the client, including any commission or other remuneration that may be received from another person.
- (5) A brokerage that has entered into an agreement with a buyer or seller that requires the buyer or seller to pay the brokerage a commission or other remuneration in respect of a trade in real estate shall not charge or collect any commission or other remuneration under another agreement entered into with another person in respect of the same trade unless,
- (a) the brokerage discloses at the earliest practicable opportunity to the other person, in writing, the terms of the agreement with the buyer or seller that require the payment of a commission or other remuneration; and
 - (b) the brokerage discloses at the earliest practicable opportunity to the buyer or seller, in writing.

Copies of agreements

28. (1) If a registrant represents a client who enters into a written agreement that deals with the conveyance of an interest in real estate, the registrant shall use the registrant's best efforts to ensure that all parties to the agreement receive a copy of the agreement at the earliest practicable opportunity.
- (2) Subsection (1) applies, with necessary modifications, if a brokerage and a customer have an agreement that provides for the brokerage to provide services to the customer in respect of any agreement that deals with the conveyance of an interest in real estate.

Inaccurate representations

37. (1) A registrant shall not knowingly make an inaccurate representation in respect of a trade in real estate.

(2) A registrant shall not knowingly make an inaccurate representation about services provided by the registrant.

Error, misrepresentation, fraud, etc.

38. A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud, or any unethical practice in respect of a trade in real estate.

Unprofessional conduct, etc.

39. A registrant shall not, in the course of trading in real estate, engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional, or unbecoming a registrant.

AGREED PENALTY

The Respondent understands and agrees to the following penalty:

To pay a fine of **\$20,000.00** on or before **May 1, 2023**.

To successfully complete the following courses or programs by the identified completion date:

Course Title (Provider)	Completion date
REIC 2600: Ethics in Business Practice	On or before May 1, 2023

To provide proof of completion to RECO within 60 days of completion of the courses.

Respondent acknowledgments:

1. I acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions.
2. I acknowledge my right to seek legal counsel in this matter before signing this agreement.

3. I agree, understand, acknowledge, and consent to waive my right to a hearing before the Discipline Committee.

Waiver of hearing before the Discipline Committee:

4. The Parties consent to disposing of the matter without a hearing before the Discipline Committee and agree to the terms set out herein.

5. The parties request an Order from the Chair of the Discipline Committee that includes this Agreement of Facts and Penalty as a final settlement of this matter.

By signature below the Parties agree, acknowledge, understand, and consent to the final settlement of this matter by way of this Agreed Statement of Facts and Penalty.

[The Agreed Statement was duly signed by the Parties.]

DECISION OF THE CHAIR

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 3, 4, 18, 28, 37, 38, and 39 of the *REBBA 2002* Code of Ethics. The Chair of the Discipline Committee (*REBBA 2002*) is also in agreement with the joint submission of the Parties as to penalty and accordingly makes the following order:

1. NASSIR ALNASHMI is Ordered to pay a fine of \$20, 000.00, payable to RECO on or before May 1, 2023.
2. NASSIR ALNASHMI is Ordered to successfully complete REIC 2600: Ethics and Business Practice on or before May 1, 2023; and, to provide proof of completion to RECO within 60 days of completion of the course.

[Released: December 5, 2022]